



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

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September 29, 2011

Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments Regarding the Fifth Staff Draft Delta Plan

Dear Chairman Isenberg and Council Members:

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide comments on the Fifth Staff Draft Delta Plan (Fifth Draft Plan). CASA is a statewide association of municipalities that provide wastewater collection, treatment, and water recycling services to millions of Californians. CASA's members will be directly impacted by the Delta Plan, and have a significant interest in its development and implementation.

CASA has not commented on previous versions of the plan, due to both the compressed timelines and the fact that others who share our concerns did provide comments. Given that, for the most part, those concerns remained unaddressed, however, CASA believes it is important to provide our input regarding the financing mechanisms articulated in Chapter 9, particularly the concept and implementation of the "stressors pay" approach.

The Activities to be Funded and the Associated Benefits Are Not Clearly Defined.

Our primary concern is that the proposed "stressor fee" is not an appropriate revenue mechanism as applied to National Pollutant Discharge Elimination System (NPDES) permit holders and would be calculated and assessed based on a particular discharger's volume of constituents discharged. The Fifth Draft Plan proposes to assess this

fee on all discharges of constituents, regardless of whether the discharger is operating in compliance with its NPDES Permit, and without an analysis of whether the discharge is actually impacting beneficial uses. Moreover, the Fifth Draft Plan specifically states that credit should not be given to dischargers for capital improvements or waste treatment costs that have or will improve water quality. Such credits might allow entities to offset some costs associated with proactively addressing issues in the Delta.

As local public wastewater agencies, CASA's members fund their activities through user rates. These rates are subject to the constitutional constraints on raising revenue set forth in Proposition 218. In order to satisfy the prerequisites of the law, local governments may include in their rates only the costs of providing a property related service to their ratepayers. The Fifth Draft Plan proposes to assess "stressor fees" against public agencies—which would, in turn, have to be recouped through user fees—yet the plan fails to describe the activities to be funded by these fees and the specific benefits that will accrue to agency ratepayers. In other words, there is no clear nexus between the proposed fees and the service to be provided. Without such a nexus, agencies would likely be precluded from adjusting user rate to include "stressor fees." While there are vague references in the Fifth Draft Plan to legislative "fixes" for Proposition 218, changes to the voter approved constitutional amendment would require a vote of the people.

The Fee Proposal Is Not Inclusive of All "Stressors"

The concept of "stressors" is neither well defined nor sufficiently inclusive. To be equitable, the fee base must be sufficiently broad to capture the range of all those who benefit from and utilize the Delta, as well as all of those sources of "stressors" that contribute to the decline of the Delta ecosystem. Other types of fees better suited to reaching a broad spectrum of stressors, including land use charges, retail sales fees, habitat alteration fees, special diversion fees, recreation use fees, and hatchery fees, have been prematurely dismissed as "infeasible." Instead, the Fifth Draft Plan proposes recovering the \$50 million combined annual expenditures of the Council, the Delta Conservancy (Conservancy), and the Delta Protection Commission (DPC) through so-called "stressor fees" and "beneficiary fees," yet no contributions are being recommended from beneficiaries of flood control, ecosystem restoration, and a long list of other beneficiaries and stressors. This is unduly narrow. We recommend that the Council include a broader base of fee payers that more accurately reflects those that benefit from and contribute to stresses upon the Delta. Should the Delta Plan ultimately include "stressor fees" as a revenue

raising mechanism, it must include all stressors to ensure that appropriate entities are paying their fair share.

No Credit Is Given to “Stressors” Who Spend Funds to Reduce Impacts on the Delta

The Fifth Draft Plan denies credit to entities that reduce impacts on the Delta by spending funds on improvements or structural changes for that purpose. Specifically, the Guiding Principles within the Finance Plan state that “[e]xisting contributions for closely related activities should be considered for crediting. Site-specific contributions by agencies should not be credited (for example, the installation of fish screens and waste treatment costs).” (Fifth Draft Plan, p. 206.) Numerous public agencies will be spending millions of dollars on efforts to reduce impacts on the Delta through improvements in treatment capability and fish protection, yet these entities will be required to pay the same stressor fees as those who have taken no early action whatsoever to improve the Delta. The absence of any credit or offset for actions undertaken to reduce a stressor’s impact on the Delta ecosystem creates a disincentive to undertake such actions. The Council should remove the latter part of this provision from the Fifth Draft Plan and create a framework for crediting those entities that are already contributing and/or are making progress towards improving the Delta.

The “Stressor Fee” Concept as Set Forth in the Fifth Draft Plan is Flawed

CASA is very concerned that the proposed “stressors pay” approach is yet another example of simply targeting permitted entities that are already operating in compliance with existing law and are already paying significant sums to comply with federal and state permitting requirements and meet applicable water quality standards. The very concept of a stressor fee on dischargers, as proposed, fails to recognize that NPDES dischargers already pay vast sums and undertake extraordinary efforts to reduce constituent loadings and comply with water quality standards. Yet, the proposed fees would be imposed on already highly regulated entities already facing significant costs to comply with evolving and increasingly stringent water quality requirements, based purely on the volume of constituents discharged.

Discharges from entities operating under NPDES permits must be in compliance with the Clean Water Act and the California Water Code, which require the protection of beneficial uses such as fishing, swimming, etc. Regional Water Quality Control Boards are required to develop permit effluent limitations to ensure that NPDES discharges do not cause or contribute to

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violations of water quality standards. NPDES dischargers are required to meet numeric and narrative water quality standards that are protective of human health and the environment. Compliance with such limitations can require hundreds of millions of dollars in capital expenditures and very significant annual operation and maintenance costs. Therefore, to suggest that additional fees should be imposed based only on the volume of constituents, without regard to their environmental effect, is entirely inappropriate.

If “stressor fees” are to be included as part of the Delta Plan, such fees should take into account the degree to which the pollutant loading affects beneficial uses of the Delta. This would more closely correlate an entity’s impact on the Delta with amount of fees charged to a stressor, and represents a more accurate and fair distribution of the fee allocations than a simple constituent volume based assessment.

The Fees Must Take Into Account Existing Programs and Avoid Duplication

The Fifth Draft Plan does not recognize or account for the existence of numerous other fees already assessed on purported “stressors” throughout the Delta. In many cases, the beneficiaries and stressors are already paying large sums of money correlated to their particular benefit from and burden on the Delta. There needs to be an evaluation of existing fees currently paid by the various Delta users (i.e., exporters, dischargers, agricultural users, recreational users, fisherman, etc.) in order to determine if any restructuring needs to take place and/or if any duplicative fees currently exist. CASA is concerned the Council will adopt additional fees as part of its proposed funding mechanisms that could duplicate efforts that are already underway, and place additional unnecessary burdens on proposed fee payers. Chapter 9 should clearly identify all sources of funding that will be used to finance programs and projects in the Delta before suggesting new fees to support the Council’s actions.

Thank you for the opportunity to provide our comments. Please contact CASA’s Director of Legal and Regulatory Affairs, Roberta Larson, at (916) 469-3887 if you have any questions regarding our comments.

Sincerely,



Gary W. Darling
President